

REMARKS

The Office Action mailed July 22, 2004 has been received and reviewed. Claims 22-50 are pending and are rejected in view of cited references. Claims 22, 25, 27, 29, 36, 38, 41 and 45 are amended. The Applicant submits that the claims are in condition for allowance for the reasons stated below.

Objection To Drawings Under 37 C.F.R. § 1.83

The Examiner objects to the drawings as failing "to show every feature of the invention specified in the claims," specifically noting that the "shaping tool that shapes the metal closure cap" recited in claim 25 is not shown in the drawings. Respectfully, claim 25 is a method claim one step of which requires fitting the closure cap onto the mouth of a container using a shaping tool. No claim is made to the shaping tool itself. Consequently, no illustration of that structural feature is required. The Applicant respectfully requests withdrawal of the objection.

Objection To Claims

Claim 29 is objected to because of a typographical error, which has been corrected.

Rejection of Claims Under 35 U.S.C. § 112

Claims 25, 29 and 45 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner states that it is unclear with respect to claims 25 and 29 how the cap is shaped by a metal shaping tool, which the Examiner states lacks sufficient support in the specification. Support for the method step is found in the specification at page 4, lines 15-25, and at page 15, lines 23-27. The Applicant respectfully submits that the method step is enabled by the specification in accordance with the enablement requirements of the first paragraph of § 112. The Applicant further submits that the language of claim 25 as original submitted is clear, but has amended claim 25 to further clarify that the shaping tool shapes the metal closure to the

outer contours of the mouth of the container. The Applicant submits that claim 25 describes the method in such precise and definite terms as is required under the second paragraph of § 112.

Regarding claim 45, the Examiner states that it is unclear how the webs (30b) extend above the height of the encircling wall (13). Claim 45 is amended to clarify the structure.

Rejection Of Claims 36-39, 41-44 And 46-47 Under 35 U.S.C. § 102(b) [Kroenert]

Claims 36-39, 41-44 and 46-47 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kroenert (US 3,057,501). Claim 36, as amended, requires a retaining member that is positioned near the bottom of the sealing device to engage the interior surface of the mouth of a container. Kroenert fails to teach a retaining member as claimed. Therefore, claim 36, and claims 37-39, 41-44 and 46-47, which depend from claim 36 and include the limitations thereof, are not anticipated by Kroenert.

Rejection Of Claims 36-37, 39-41, 43-45, 47, 49 And 50 Under 35 U.S.C. § 102(b) [Wilde]

Claims 36, 37, 39-41, 43-45, 47, 49 and 50 are rejected under 35 U.S.C. § 102(b) as being anticipated by Wilde (USP 5,884,788). Claim 36, as amended, requires a retaining member that is positioned near the bottom of the sealing device to engage the interior surface of the mouth of a container, the bottom of the sealing device being positioned for positioning within the interior of the mouth of the container. Wilde fails to teach a sealing cap as claimed where the bottom of the sealing cap is positioned to be disposed within the interior of the mouth of the container and fails to disclose a retaining member as claimed. Therefore, claim 36, and claims 37, 39-41, 43-45, 47, 49 and 50, which depend from claim 36 and include the limitations thereof, are not anticipated by Wilde.

Rejection Of Claims 36-44 And 47 Under 35 U.S.C. § 102(b) [Collins]

Claims 36-44 and 47 are rejected under 35 U.S.C. § 102(b) as being anticipated

by Collins (USP 3,788,510). Amended claim 36 requires a sealing device the bottom of which is positioned for disposition within the interior of the mouth of a container. Collins fails to teach a sealing cap as claimed where the bottom of the sealing cap is positioned to be disposed within the interior of the mouth of the container and fails to disclose a retaining member as claimed where the retaining member is positioned near the bottom of the sealing cap. Therefore, claim 36, and claims 37-44 and 47, which depend therefrom and include the limitations of claim 36, are not anticipated by Collins.

Rejection Of Claims 36, 39-42 And 47-48 Under 35 U.S.C. § 102(b) [Miller]

Claims 36, 39-42 and 47-48 are rejected under 35 U.S.C. § 102(b) as being anticipated by Miller (USP 6,044,994). Claim 36 requires a retaining member which is not taught by Miller. Therefore, claim 36, and claims 39-42 and 47-48, which depend from claim 36 and include the limitations thereof, are not anticipated by Miller.

Rejection Of Claims 22-25, 27 And 31-35 Under 35 U.S.C. § 103(a)

Claims 22-25, 27 and 31-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Downs, et al. (USP 3,494,094) ("Downs") in view of Wheaton (USP 3,040,493). The Examiner states that Downs discloses a container closure with a liner and dust inserts that are sterilized then applied to a filled bottle container before being capped with a cover cap. The Examiner states that Downs does not disclose applying the cap to the container and then cleaning the container in the mouth region, which, the Examiner states, Wheaton teaches. The rejection is traversed.

In order to establish a *prima facie* case of obviousness, there must be 1) some suggestion or motivation either in the references themselves or in the generally available knowledge to modify the reference or to combine the reference teachings; 2) a reasonable expectation of success; and 3) a teaching or suggestion of all the claim limitations found in the references. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art. *In re Vaeck*, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Downs and Wheaton fail to

establish a *prima facie* case of obviousness because, in the first instance, Downs teaches a sealing method that intentionally and specifically eliminates the need to clean the mouth of the container, thereby saving packers the considerable expense of washing the containers. (See, column 1, lines 33-47.) It is for that reason that Downs specifically fails to teach a cleaning step and, in fact, specifically teaches away from a cleaning step. Therefore, since Downs teaches away from providing a cleaning step, one of skill in the art would not be motivated by the Downs disclosure to institute a cleaning step as required by claims 22-35, regardless of what Wheaton teaches. Additionally, the teachings of Downs and Wheaton are inapposite. Downs teaches a sealing method to specifically avoid washing the containers and Wheaton teaches a temporary, removable sealing cap to enable washing the containers. One of skill in the art would find no motivation in the references to combine them in the manner suggested, nor is there any reasonable expectation that combining the references as suggested by the Examiner would provide that which is claimed. Therefore, claims 22-25, 27 and 31-35 are not obviated by Downs and/or Wheaton.

Rejection Of Claims 22-25, 27 And 31-35 Under 35 U.S.C. § 103(a)

Claims 22-25, 27 and 31-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wheaton (USP 3,040,493) in view of Downs, et al. (USP 3,494,094) ("Downs"). The Examiner states that Wheaton teaches a method of cleaning the mouth region of a filled container comprising the use of the mouth cover (26) to protect the filled contents of the container. The Examiner states that Wheaton does not disclose the cover being an insert, and covered with an over cap, which the Examiner contends is taught by Downs, which teaches a cover being an insert and use of a dust cap. The rejection is overcome with clarifying amendment of claim 22. As amended, claim 22 requires placement of a sealing cap on a container, followed by washing the mouth region of the container, then followed by placement of a closure cap over the sealing cap. Wheaton discloses a method of providing a temporary disc over the open mouth of filled containers to temporarily close the container for washing of the mouth

region; thereafter, the temporary seals are removed, cleaned and reused on subsequent containers in a mouth-cleaning step. Therefore, the teaching of Wheaton is contrary to that which is claimed, namely, providing a sealed container for washing followed by placement of a closure cap over the sealing cap. Additionally, for the reasons stated above, Downs teaches the application of a sealing device to intentionally eliminate the need to clean the mouth of the containers. Therefore, one of skill in the art could find no motivation in the cited references to combine them as suggested by the Examiner, and neither reference discloses any reasonable expectation of making the suggested combination. Indeed, the references teach away from each other. Wheaton and Downs fail to establish a *prima facie* case of obviousness for that reason. Claims 22-25, 27 and 31-35 are not obviated by the references.

Rejection Of Claims 26 And 29-30 Under 35 U.S.C. § 103(a)

Claims 26 and 29-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Downs in view of Wheaton as applied to claim 22, and further in view of Mumford (USP 3,564,805). The Examiner states that Downs does not teach a threaded cap, and that Mumford teaches telescoping an overcap onto a dust-cap/liner, after filling. For the reasons stated above, Downs and Wheaton teach away from each other and fail to establish a *prima facie* case of obviousness to obviate the claims. Mumford is directed to a method of removing a dust cover from the mouth of an empty container using a rigid overcap so that the dust cover adheres to and becomes part of the rigid overcap, and the overcap with attached dust cover is then replaced on the container after filling. Mumford, therefore, fails to teach that which is required by claims 26, 29 and 30, namely screwing the closure cap on an already sealed container. Consequently, neither Wheaton, Downs nor Mumford can be combined to obviate claims 26, 29 and 30.

Rejection Of Claims 26 And 29-30 Under 35 U.S.C. § 103(a)

Rejection Of Claims 26 And 29-30 Under 35 U.S.C. § 103(a)

Claims 26 and 29-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wheaton in view of Downs as applied to claim 22, and further in view of Mumford (USP 3,564,805). The Examiner states that Wheaton does not teach a threaded cap, but that Mumford teaches telescoping an overcap onto a duster-cap/liner after filling, and teaches that threaded overcaps are equivalent to crown caps. For the reasons stated above with respect to claim 22, Wheaton and Downs are not combinable as suggested by the Examiner because they teach away from each other. Therefore, Wheaton and Downs fail to establish a *prima facie* case of obviousness in the first instance. Further, for the reasons stated above, Mumford fails to teach that which is required by claims 26, 29 and 30. Therefore, Wheaton, Downs and Mumford cannot be combined to obviate claims 26, 29 and 30.

Rejection Of Claim 28 Under 35 U.S.C. § 103(a)

Claim 28 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Downs in view of Wheaton as applied to claim 22, and further in view of Gustafsson. The Examiner states that Downs, as modified, does not teach the use of a drying tool, but that Gustafsson teaches a bottling method with a drying step having the benefit of removing condensed residues of sterilizing agent. As stated previously, Downs and Wheaton fail to establish a *prima facie* case of obviousness because they teach away from each other. In particular, Downs specifically teaches a method of sealing containers to eliminate a cleaning step. Consequently, not only would one skilled in the art not be motivated to combine Downs with Wheaton, but there would be no motivation to provide the drying step presumably disclosed by Gustafsson if no cleaning step is required in the first place. More importantly, however, Gustafsson teaches a method of introducing a sterilizing agent *into* a container through the (obviously unsealed) aperture or mouth of the container, and doing so under heated conditions to lessen condensation of the sterilizing agent inside the container. Thus, the teachings of Gustafsson are, again, inapposite to the teachings of Wheaton and Downs, and are

irrelevant to that which is claimed. Claim 28 is not obviated by any Downs, Wheaton and/or Gustafsson.


Rejection Of Claim 28 Under 35 U.S.C. § 103(a)

Claim 28 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Wheaton in view of Downs as applied to claim 22, and further in view of Gustafsson. The Examiner states that Wheaton, as modified, does not teach the use of a drying tool, but that Gustafsson teaches a bottling method with a drying step having the benefit of removing condensed residues of sterilizing agent. For the same reasons stated above, Wheaton and Downs fail to establish a *prima facie* case of obviousness because their teachings cannot be combined as suggested by the Examiner, and Gustafsson fails to disclose any method or process relevant to that which is claimed, namely cleaning the mouth region of a sealed container with a drying tool. Claim 28 is not obviated, therefore.

CONCLUSION

In view of the amendments made and arguments submitted herein, the Applicant submits that claims 22-50 present patentable subject matter. Reconsideration and allowance are respectfully requested.

Respectfully submitted,


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